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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re GUADALUPE V., a Person Coming
Under the Juvenile Court Law.

B249322
(Los Angeles County Super. Ct.
No. NJ27316)

THE PEOPLE,

Plaintiff and Respondent,

v.

GUADALUPE V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, John H. Ing, Judge. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Chung Mar and Jessica C. Owen, Deputy Attorneys General, for Plaintiff and Respondent.

The Los Angeles County District Attorney filed a petition pursuant to section 602 of the Welfare and Institutions Code, alleging the following counts against minor and appellant Guadalupe V.: (1) possession of a firearm by a minor (Pen. Code, § 29610);¹ (2) carrying a loaded firearm by an active participant in a street gang (§ 25850); and (3) having a concealed firearm on his person (§ 25400). After the juvenile court denied minor's motion to suppress evidence, minor admitted count 1. The court dismissed counts 2 and 3, declared minor a ward of the court, and ordered him suitably placed. On appeal, minor contends the juvenile court erred in denying his motion to suppress evidence. We affirm.

FACTS

Minor was a passenger in a Toyota driven by his girlfriend. Their 17-month-old daughter was in a car seat in the back. The car was parked when Officers Ron and Vasquez pulled up beside them. Officer Vasquez was in the passenger seat of the police car. He recognized minor from previous interactions and noticed the car was parked in a red zone. The patrol car reversed and parked behind the Toyota, slightly offset to the left.

Officer Ron approached the driver, while Officer Vasquez approached minor, standing about six inches away from the passenger side front door and making small talk with minor. Officer Vasquez noticed that minor was extremely nervous; his lip was quivering when he spoke and his hand was shaking. Minor had not seemed nervous during prior stops, so Officer Vasquez asked why he was so nervous. Minor responded it was because his girlfriend and daughter were in the car. Officer Vasquez did not ask minor any questions about the parking violation. After about a minute and a half, Officer Vasquez asked minor if he had a gun. Minor replied that he did, at which point Officer Vasquez directed minor to exit the car with his hands up. Officer Vasquez then removed a small handgun from under minor's shirt.

¹ All further statutory references are to the Penal Code, unless otherwise stated.

DISCUSSION

“The standard of review of a trial court’s ruling on a motion to suppress is well established and is equally applicable to juvenile court proceedings. ““On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court’s ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court that are supported by substantial evidence and independently determine whether the facts support the court’s legal conclusions. [Citation.]” [Citation.]” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.) “The power to judge credibility of witnesses, resolve conflicts in testimony, weigh evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor proper exercise of that power, and the trial court’s findings -- whether express or implied -- must be upheld if supported by substantial evidence. [Citations.]” (*People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 410.)

Minor contends he was detained by the police officers, who lacked reasonable suspicion necessary for a traffic stop. He also contends that the stop was prolonged beyond the time necessary to issue a traffic citation.

“Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual’s liberty. [Citations.]” (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*)).

Fourth Amendment analysis is not necessary for consensual encounters, and the police need not offer any “articulable suspicion that the person has committed or is about to commit a crime.” (*Manuel G., supra*, 16 Cal.4th at p. 821.) Temporary detention of individuals during a traffic stop, even if only for a brief period and for a limited purpose, constitutes a “seizure” triggering Fourth Amendment protections. (*U.S. v. Whren* (1996)

517 U.S. 806, 809-810.) When a passenger is detained as part of a traffic stop, there must be a reasonable suspicion that the driver has violated the law in some way. (*People v. Wells* (2006) 38 Cal.4th 1078, 1082.) So long as the stop is not unreasonably prolonged, officers may ask questions unrelated to the justification for the traffic stop. (*Arizona v. Johnson* (2009) 555 U.S. 323, 325.) A passenger in a car subject to a traffic stop is entitled to challenge the validity of the stop. (*Brendlin v. California* (2007) 551 U.S. 249.)

“[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” (*Florida v. Bostick* (1991) 501 U.S. 429, 439.) The fact that an individual is in a vehicle does not automatically mean that an interaction with the police rises to the level of a traffic stop or detention requiring reasonable suspicion. For example, a motorcycle passenger was not detained where “the objective indicia of a detention were absent” because the motorcycle driver had pulled over voluntarily before the police had displayed any gesture of authority, such as using the squad car’s flashing lights or siren. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237-1238.)

Officer Vasquez testified he recognized minor from prior occasions, the car was parked in a red zone, and while Officer Ron was speaking to the driver, he engaged minor in a brief, casual conversation. During the conversation, Officer Vasquez noticed minor was nervous in a way that was different from prior interactions, and then minor admitted to possessing a gun. The trial court expressly found Officer Vasquez’s testimony credible. Officer Vasquez’s testimony supports the court’s denial of the motion to suppress based either on a finding that there was no detention—in which case no Fourth Amendment analysis is necessary—or that there was reasonable suspicion to support a traffic stop and that the stop was not prolonged.

Minor argues that Officer Vasquez’s testimony about the length of the conversation is not credible in light of evidence of an hour and a half lag between his

arrest and booking, and his girlfriend's testimony that police questioning lasted about 20 minutes. Minor fails to explain the constitutional significance under the Fourth Amendment of an administrative delay in booking after an otherwise valid arrest. The length of time between minor's arrest and booking, in any event, is not substantial given the practicalities of the booking process.

Minor also contends that the officers did not have reasonable suspicion to detain minor and his girlfriend based on a parking violation alone. Minor attempts to convince this court that the reasoning in *United States v. Choudhry* (2006) 461 F.3d 1097 is incorrect, and that a parking violation alone is insufficient to create the reasonable suspicion necessary to justify a stop. In rejecting this argument, we agree with Division One of this court in finding a parking violation is sufficient to provide reasonable suspicion for a traffic stop. (*People v. Bennett* (2011) 197 Cal.App.4th 907, 912-918.)

We conclude the consensual encounter between Officer Vasquez and minor did not implicate the Fourth Amendment. The car in which minor was a passenger was unlawfully parked, and Officer Vasquez did no more than engage minor in a brief, casual conversation leading to the discovery that minor was in possession of a gun. The fact that the car was illegally parked provides a reasonable basis for the officers to approach the vehicle, and substantial evidence supports the trial court's finding that the stop was not prolonged.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MINK, J.*

* Retired judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.